



Public Services Ombudsman (Wales) Act 2005

2005 CHAPTER 10

PART 3

MISCELLANEOUS AND GENERAL

General

39 Amendments and repeals

- (1) Schedule 6 (which contains amendments consequential on this Act) has effect.
- (2) Schedule 7 (which contains repeals) has effect.

Commencement Information

- II** [S. 39](#) wholly in force at 1.4.2006; [s. 39](#) not in force at Royal Assent see [s. 40](#); [s. 39](#) in force for certain purposes at 12.10.2005 and wholly in force at 1.4.2006 by [S.I. 2005/2800](#), [arts. 3, 5\(1\)\(3\)](#), [Sch. 1](#) (with [arts. 5\(2\), 7, Sch. 2](#))

40 Commencement

The preceding provisions of this Act come into force in accordance with provision made by the [^{F1}Welsh Ministers] by order.

Subordinate Legislation Made

- P1** [S. 40](#) power partly exercised: different dates appointed for specified provisions by {[S.I. 2005/2800](#)}, [arts. 3, 4\(1\)\(2\), 5\(1\)\(3\)](#), [Sch. 1](#) (with [arts. 4\(3\), 5\(2\), 7, Sch. 2](#))

Status: Point in time view as at 01/01/2010.

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, Cross Heading: General. (See end of Document for details)

Textual Amendments

- F1** Words in s. 40 substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 81](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

41 Interpretation

(1) In this Act—

“act” and “action” include a failure to act (and related expressions must be construed accordingly);

“annual report” has the meaning given in paragraph 14 of Schedule 1;

^{F2}

“the Assembly” means the National Assembly for Wales;

“co-opted member”, in relation to an authority, means a person who is not a member of the authority but who—

- (a) is a member of a committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, a joint committee on which the authority is represented or a sub-committee of such a committee,

and who is entitled to vote on any question which falls to be decided at a meeting of the committee or sub-committee;

“extraordinary report” has the meaning given in paragraph 14 of Schedule 1;

“family health service provider in Wales” means—

- (a) a person who, at the time of action which is the subject of a complaint under this Act, provided services under a contract entered into by that person with a Local Health Board under [^{F3}section 42 or section 57 of the National Health Service (Wales) Act 2006];
- (b) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under ^{F4} . . . that Act;
- (c) an individual who, at that time, provided in Wales [^{F5}primary medical services or primary dental services] in accordance with arrangements made under [^{F6}section 50 or 64] of that Act (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales);

(d) ^{F7}

“family health services” means services mentioned in any of paragraphs (a) to (d) of the definition of “family health service provider in Wales”;

“financial year” means the 12 months ending on 31 March;

“independent provider in Wales” means a person who, at the time of action which is the subject of a complaint under this Act—

- (a) provided services of any kind in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, and
- (b) was not a Welsh health service body or a family health service provider in Wales;

[^{F8}“investigation”—

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- (a) in relation to the Ombudsman, means an investigation under section 2 (and cognate expressions must be construed accordingly);
 - (b) in relation to another ombudsman or commissioner, includes an examination (and cognate expressions must be construed accordingly);]
“listed authority” has the meaning given in section 28;
“local authority in Wales” means a county council, county borough council or community council in Wales;
“Local Commissioner” has the meaning given in section 23(3) of the Local Government Act 1974 (c. 7);
“NHS trust” has the same meaning as in [F9the National Health Service (Wales) Act 2006];
“the Ombudsman” has the meaning given in section 1;
“the person aggrieved” has the meaning given in section 4(1)(a);
“publicly-funded dwelling” means—
 - (a) a dwelling which was provided by means of a grant under—
 - (i) section 18 of the Housing Act 1996 (c. 52) (social housing grant), or
 - (ii) section 50 of the Housing Act 1988 (c. 50), section 41 of the Housing Associations Act 1985 (c. 69), or section 29 or 29A of the Housing Act 1974 (c. 44) (housing association grant);
 - (b) a dwelling which was acquired on a disposal by a public sector landlord (within the meaning of Part 1 of the Housing Act 1996);
“relevant tribunal” means a tribunal (including a tribunal consisting of only one person) specified by order made by the [F10Welsh Ministers];
“social landlord in Wales” means—
 - (a) a body which was at the time of action which is the subject of a complaint under this Act registered as a social landlord in the register maintained by the [F11Welsh Ministers] under section 1 of the Housing Act 1996 (or in the register previously maintained under that section by [F12the Assembly constituted by the Government of Wales Act 1998,] the Secretary of State or Housing for Wales);
 - (b) any other body which at the time of action which is the subject of a complaint under this Act was registered with Housing for Wales, the Secretary of State [F13, the Assembly constituted by the Government of Wales Act 1998 or the Welsh Ministers] and owned or managed publicly-funded dwellings;
“special report” has the meaning given in section 22;
“Wales” has the meaning given in section 155(1) of the Government of Wales Act 1998 (c. 38);
“Welsh health service body” means—
 - (a) the [F14Welsh Ministers];
 - (b) a Local Health Board;
 - (c) an NHS trust managing a hospital or other establishment or facility in Wales;
 - (d) a Special Health Authority not discharging functions only or mainly in England.
- (2) For the purposes of the definition of “independent provider in Wales”, arrangements with the [F15Welsh Ministers] are arrangements with a Welsh health service body

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only to the extent that they are made in the discharge of a function of the [^{F15}Welsh Ministers] relating to the National Health Service.

[^{F16}(2A) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.]

(3) The [^{F17}Welsh Ministers] may by order amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.

(4) Before making an order under subsection (3), the [^{F18}Welsh Ministers] must consult such persons as [^{F19}they think] appropriate.

[^{F20}(4A) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.]

(5) Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as it applies for the purposes of that Act.

(6) For the purposes of this Act, references to action taken by a listed authority include action taken by—

- (a) a member, co-opted member, committee or sub-committee of the authority acting in the discharge of functions of the authority;
- (b) an officer or member of staff of the authority, whether acting in the discharge of his own functions or the functions of the authority;
- (c) any other person acting on behalf of the authority.

Textual Amendments

- F2** S. 41(1): definition repealed by [Government of Wales Act 2006 \(c. 32\)](#), ss. 160(1), 163, [Sch. 10 para. 82\(2\)\(a\)](#), [Sch. 12](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after “the 2007 election” (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F3** S. 41(1): words in definition substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8, [Sch. 1 para. 280\(a\)\(i\)](#) (with [Sch. 3 Pt. 1](#))
- F4** S. 41(1): words in definition omitted (1.3.2007) by virtue of [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8, [Sch. 1 para. 280\(a\)\(ii\)](#) (with [Sch. 3 Pt. 1](#))
- F5** S. 41(1): words in definition substituted (1.4.2006) by [The Public Services Ombudsman for Wales \(Jurisdiction and Transitional Provisions and Savings\) Order 2006 \(S.I. 2006/363\)](#), [art. 4\(b\)](#) (with arts. 5-7, [Sch. 3 Pt. 1](#))
- F6** S. 41(1): words in definition substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8, [Sch. 1 para. 280\(a\)\(iii\)](#) (with [Sch. 3 Pt. 1](#))
- F7** S. 41(1): words in para. (d) in definition of “family health service provider in Wales” omitted (1.4.2006) by virtue of [The Public Services Ombudsman for Wales \(Jurisdiction and Transitional Provisions and Savings\) Order 2006 \(S.I. 2006/363\)](#), [art. 4\(c\)](#) (with arts. 5-7)
- F8** S. 41(1): definition substituted (14.10.2006) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 2\(4\)](#); S.I. 2006/2699, [art. 2](#)
- F9** S. 41(1): words in definition substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8, [Sch. 1 para. 280\(b\)](#)
- F10** S. 41(1): words in definition substituted by [Government of Wales Act 2006 \(c. 32\)](#), s. 160(1), [Sch. 10 para. 82\(2\)\(b\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after “the 2007 election” (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for

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- certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F11** S. 41(1): words in definition substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(2\)\(c\)\(i\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F12** S. 41(1): words in definition inserted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(2\)\(c\)\(i\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F13** S. 41(1): words in definition substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(2\)\(c\)\(ii\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F14** S. 41(1): words in definition substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(2\)\(d\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F15** Words in s. 41(2) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(3\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F16** S. 41(2A) inserted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(4\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F17** Words in s. 41(3) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(5\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F18** Words in s. 41(4) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(6\)\(a\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F19** Words in s. 41(4) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 82\(6\)\(b\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the

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2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

F20 S. 41(4A) inserted by [Government of Wales Act 2006 \(c. 32\)](#), [s. 160\(1\)](#), [Sch. 10 para. 82\(7\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

42 Former health care providers and social landlords: modifications

- (1) The [^{F21}Welsh Ministers] may by regulations provide for this Act to apply with the modifications specified in the regulations to persons who are—
 - (a) former family health service providers in Wales;
 - (b) former independent providers in Wales;
 - (c) former social landlords in Wales.
- (2) “Former family health service provider in Wales” means a person who—
 - (a) at the relevant time, provided family health services of a particular description, and
 - (b) subsequently ceased to provide services of that description (whether or not he has later started to provide them again).
- (3) “Former independent provider in Wales” means a person who—
 - (a) at the relevant time, provided services of a particular description in Wales under arrangements with a Welsh health service body or a family health service provider in Wales,
 - (b) was not a Welsh health service body or a family health service provider in Wales at that time, and
 - (c) subsequently ceased to provide services of that description (whether or not he has later started to provide them again).
- (4) “Former social landlord in Wales” means a person who—
 - (a) at the relevant time—
 - (i) was registered as a social landlord in the register maintained by the [^{F22}Welsh Ministers] under section 1 of the Housing Act 1996 (c. 52) (or in the register previously maintained under that section by the Secretary of State or Housing for Wales), or
 - (ii) was registered with Housing for Wales, the Secretary of State [^{F23}, the Assembly constituted by the Government of Wales Act 1998 or the Welsh Ministers] and owned or managed publicly-funded dwellings, and
 - (b) subsequently—
 - (i) ceased to be registered as mentioned in paragraph (a)(i) or (ii) (whether or not he later became so registered again), or
 - (ii) ceased to own or manage publicly-funded dwellings (whether or not he later did so again).

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- (5) “The relevant time” is the time of action which is the subject of a complaint under this Act.
- [^{F24}(6) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.]

Textual Amendments

- F21** Words in s. 42(1) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 83\(2\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F22** Words in s. 42(4)(a)(i) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 83\(3\)\(a\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F23** Words in s. 42(4)(a)(ii) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 83\(3\)\(b\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F24** S. 42(6) inserted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 83\(4\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

43 Consequential, transitional provisions etc.

- (1) The [^{F25}Welsh Ministers] may by order make—
- such consequential, incidental or supplemental provision, and
 - such transitory, transitional or saving provision,
- as [^{F26}they think] necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may in particular amend, repeal or revoke any enactment other than one contained in an Act passed in a Session after that in which this Act is passed.
- (3) The amendments that may be made by virtue of subsection (2) are in addition to those made by or under any other provision of this Act.
- [^{F27}(4) No order is to be made under subsection (1) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.]

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Textual Amendments

- F25** Words in s. 43(1) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 84\(2\)\(a\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F26** Words in s. 43(1) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 84\(2\)\(b\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F27** [S. 43\(4\)](#) inserted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 84\(3\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

44 Orders, regulations and directions

- (1) A power of the [^{F28}Welsh Ministers] to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) An order or regulations made by the [^{F28}Welsh Ministers] under this Act may—
 - (a) make different provision for different purposes;
 - (b) make consequential, incidental, supplemental, transitory, transitional or saving provision.
- (3) ^{F29}.....
- (4) A direction given under this Act—
 - (a) may be amended or revoked by the person who gave it;
 - (b) may make different provision for different purposes.

Textual Amendments

- F28** Words in s. 44(1)(2) substituted by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), Sch. 10 para. 85\(2\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.
- F29** [S. 44\(3\)](#) repealed by [Government of Wales Act 2006 \(c. 32\), s. 160\(1\), 163, Sch. 10 para. 85\(3\), Sch. 12](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to [s. 161\(4\)\(5\)](#) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46, 161\(1\)\(4\)\(5\)](#) of the amending Act.

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45 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales only.
- (2) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.

46 Short title

This Act may be cited as the Public Services Ombudsman (Wales) Act 2005.

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